IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2006

CORAM

THE HONOURABLE MR.JUSTICE.P.K.MISRA

AND

THE HONOURABLE MR.JUSTICE.M.JAICHANDREN

L.P.A.NO.161 OF 2002
AND
C.M.P.No.13275 of 2002

India Motor Parts and
Accessories Limited,
781, Annasalai, Madras -2 ... Appellant/ Respondent/ Petitioner

-vs-

Employees' State Insurance
Corporation,
Represented by the Regional
Director,
143, Sterling Road,
Madras - 34 ...Respondent/ Appellant/ Respondent

For appellant : Mr.Sanjay Mohan for
S.Ramasubramaniam & Associates
For respondent: Mr.B.R.Ramesh Babu

Prayer : This appeal has been filed to set aside the order passed by the learned single judge made in C.M.A.No.1039 of 1990, dated 28.10.1998.

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J U D G M E N T

M.JAICHANDREN.J

The present appeal has been preferred against the order of the learned single Judge, dated 28.10.1998, made in CMA.No.1039 of 1990 in E.S.I.O.P.No.50 of 1986 on the file of the Employees' State Insurance Tribunal (First Additional Judge) , City Civil Court, Chennai.

2. It is the case of the appellant in the present appeal and the petitioner before the Employees' State Insurance Tribunal, Chennai, that it is a limited liability company, incorporated under the Companies Act, having its registered office at Chennai, carrying on business in automobile spare parts and accessories with separate and independent units located in various States in India, apart from its registered office at Chennai. Being a commercial

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establishment, the appellant's registered office at Chennai had been outside the purview of the Employees' State Insurance Act, 1948, until the Tamil Nadu Government, by a Notification in G.O.Ms.No.1088, dated 22.12.1976, extended the provisions of the Act to such establishments with effect from 16.01.1977.

3. On 20.06.1984, the respondent Corporation had issued a notice to the appellant proposing adhoc determination of contribution in respect of the employees of the branch offices of the appellant establishment, for the period from 16.01.1977 to 30.01.1984. By a letter, dated 16.06.1986, the appellant establishment had replied to the notice of the respondent corporation, dated 20.06.1984, and also the appellant establishment was represented in person and made the following submissions:

> "a) that the branch offices of the appellant establishment were coverable only under the respective State Notifications and not with reference to Section 2 (9)(iii) of the Employees' State Insurance Act,1948
>
> b) that all the employees of the branches had been brought under coverage from 27.1.1985 irrespective of the strength of the branches ie. whether 20 or more were employed independently in each of the units and hence retrospective coverage with regard to contributions does not arise in the branches with less than 20 employees."

4. It is stated by the respondent corporation that the appellant establishment which is a Trading Company has been treated as covered under the provisions of the Act from 16.01.1977 on the basis of the particulars furnished by the employer in Form 01, dated 10.08.1976, and in terms of the G.O.Ms.No.1088, dated 22.12.1976. As per the records, the appellant establishment had several branches in various parts of the country. The employer had not brought under coverage of the Act, these branches, as required with particular reference to Section 2 (9) (iii) of the Act, inspite of several demands made by the respondent Corporation. According to the the respondent Corporation, the appellant establishment had branches at Delhi, Jalander City, Jaipur, Joadpur, Calcutta, Cuttack, Patna, Vijayawada and Kanpur. In view of the continued non-compliance by the appellant establishment, a show cause notice was issued to the employer, on 10.06.1984, proposing adhoc determination of contributions due from the appellant establishment for the period from 16.01.1977 to 30.01.1984. By a letter, dated 03.07.1984, the appellant establishment made a request to the respondent Corporation that sufficient opportunity had to be afforded for finalizing the issue. Hence, a personal hearing was also given on 01.09.1984, and another opportunity was provided to the appellant by a letter, dated 30.04.1986, to appear for personal hearing on 29.05.1986. However, the appellant establishment had sought for further time. Therefore, the personal hearing was held on 19.06.1986, on which date, the Chief Accountant of the appellant establishment, had appeared and submitted a letter, dated 16.06.1986, and reiterated their earlier contentions.

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5. The respondent Corporation, while rejecting the contentions raised by the appellant establishment, passed an order, dated 25.06.1986, making the appellant establishment liable to pay

the contributions for a sum of Rs.4,24,617.50 for the period from 16.01.1977 to 30.01.1984 as finally determined plus interest at the rate of 6% per annum upto the date of the said order and had further directed to pay the above mentioned amount together with interest payable at the rate of 6% for each day of further default from the date of the said order till the date of payment. It was further stated that if the employer establishment fails to pay the said amount, it would be recovered from them as an arrears of land revenue. The said order had been passed under Section 45 A of the Employees State Insurance Act, 1948, by proceedings No.TN/INS IV/51-8806, dated 25.06.1986.

6. The appellant employer being aggrieved by the order of the respondent Corporation, dated 25.6.1986, had filed E.S.I.O.P.No.50 of 1986, before the Employees State Insurance Tribunal, Chennai, (First Additional Judge) City Civil Court, Chennai, stating that the order passed by the respondent Corporation on 25.6.1986, was illegal and arbitrary. It was further contended on behalf of the appellant establishment that its various branches in several States were only commercial establishments and cannot be considered as industrial establishments and each branch is independent of any other branch or head office and each branch is operating a separate bank account without connection with the other branches. The branches were placing orders for their requirements directly with the suppliers and each branch purchases and sells materials in their respective areas. Further, the employees of each of the branches were controlled independently by the concerned branch and the branch offices were registered under the Local Shops and Establishments Act. Therefore, an employee working in a branch cannot be deemed to be a person employed in connection with the working of the head office or with the administration of the Head Office or with any other branch, since the branches were independent undertakings and there was no functional integration amongst the branches, and the head office at Chennai. Voluntary submission of the branches giving the benefit under the Act to the employees from 27.01.1985, cannot be deemed to satisfy the condition that the branch offices were integral part or a limb of the head office and thereby, being liable as alleged by the respondent corporation. In fact, the various branches have their own schemes of medical benefits for its employees without any contribution being claimed or collected from its employees. Further, the respondent corporation is estopped from claiming the contribution from the appellant establishment since it is deemed to have waived their right of accepting the appellant establishment's contributions made from 27.01.1985. It was also contended on behalf of the appellant establishment that the claim of the respondent corporation was time barred.

Based on the grounds raised and on the contentions put forth by the appellant establishment, the Employees' State Insurance Tribunal, Chennai had framed the following issues.

1) whether the employees employed in the branch offices and the sales offices were covered by the Employees' State Insurance Act?

2) whether the order passed by the respondent under Section 45A of the Employees' State Insurance Act is valid in law ?

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3) whether the demand of the respondent is time barred and any other relief could be granted?

7. The Employees State Insurance Tribunal, based on the oral and documentary evidence decided issues 1 and 2 in favour of the petitioner stating that the Employees' State Insurance Act, 1948, will not cover the branch offices and the sales offices, since the respondent corporation had not proved that there were 20 or more employees working in those establishments at the relevant point of time. It was found that there was no evidence or a report of inspection to show that the head office at chennai or the branch offices or the 14 others branch offices had 20 or more employees working. It was also found by the tribunal that the order passed by the respondent corporation on 25.06.1986 under Section 45A of the Employees' State Insurance Act, 1948, was invalid in law. However, with regard to issue No.3 as to whether the claim of the respondent corporation was time barred, the tribunal had held that it was not time barred as claimed by the present appellant and the petitioner before the tribunal. Against the said order passed by the tribunal on 20.07.1989, the respondent corporation had filed a C.M.A.No.1039 of 1990, before this court under its appellant jurisdiction.

8. The grounds of challenge raised by the respondent corporation before the learned single Judge include the ground that the order passed by the tribunal is against law and that the appellant establishment is squarely covered by the notification issued by the Government of Tamil Nadu under Section 1 (5) of the State Insurance Act, 1948. Further, it was stated by the respondent Corporation that the appellant establishment is liable to pay the contribution under the Act, with effect from 16.01.1977, and that the tribunal had erred and rejected the claim of the respondent Corporation demanding a sum of Rs.4,24,617.50 from the appellant establishment as its contribution. Further, the finding of the tribunal that the branches of the appellant establishment ought to have employed 20 or more persons for the purpose of coverage under the notification was wrong and incorrect. It was further contended by the respondent corporation that the tribunal ought to have noted that the definition of establishment in the notification is wide enough to cover the persons employed in the branches of the appellant establishment. It was also raised as a ground by the respondent corporation that the tribunal ought to have seen that a consolidated balance sheet was prepared by the appellant establishment which was clear evidence to hold that the registered office at chennai and its branches in the other states had functional integrality and therefore, the branches cannot be taken to be functioning independently as claimed by the appellant establishment. Therefore, the notification bearing G.O.Ms.No.1088, dated 22.12.1976, issued by the Government of Tamil Nadu under Section 1(5) of the Act would bring the appellant establishment under the coverage of the said act. The Learned Single Judge having considered the contentions of the respondent corporation which had filed the appeal before this court in C.M.A.No.1039 of 1990 had come to the conclusion that the respondent corporation was entitled to demand for the payment of contribution by its order, dated 25.06.1986, passed under Section 45A of the Employees State Insurance Act, 1948. The Learned Single Judge has further stated

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that since the Employees' State Insurance Act, 1948, is a welfare legislation and the notification issued thereunder should be construed liberally so as to achieve the purpose of the legislation rather than frustrate or stultify it relying on the principle enunciated by the Supreme Court in International Ore & Fertilizers (India) Pvt.Ltd Vs. E.S.I.Corporation (1998 I L.L.J.235). The learned Judge had also relied on the decision of the Apex Court in the case of Royal Talkies, Hyderabad, and others Vs. Employees' State Insurance Corporation (1978) 4 Supreme Court cases 204) in which it was held as follows :-

> "The benefits belong to the employees and are intended to embrace as extensive a circle as is feasible. In short, the social orientation, protective purpose and human coverage of the Act are important considerations in the statutory construction, more weighty than mere logomachy or grammatical nicety."

In the said decision Justice.V.R.Krishna Iyer, speaking for the Bench, has further observed

> " The reach and range of the definition is apparently wide and deliberately transcends pure contractual relationships. We are in the field of labour jurisprudence, welfare legislation and statutory construction which must have due regard to part IV of the Constitution. A teleological approach and social perspective must play upon the interpretative process".

9. Further, it was found by the Learned Single Judge that during the examination of one Mr.Chandrasekaran, Senior Accounts Officer of the appellant establishment, had deposed that there was no connection with the registered office at Chennai and the branch offices situated in the other states. The branch offices take care of themselves with regard to the work involved. However, it was noted that he had admitted that income tax returns were filed only by the Chennai office for the branches as well. Further, it has been found that the appellant establishment had stated in the letter No.AC/SR/3968, dated 17.01.1984, that the accounts of the branch offices were consolidated and a single balance sheet, profit and loss account and trading account is prepared. The learned single judge had taken into consideration the admission by the appellant-establishment that the registered office at Chennai was having control over of the branches and therefore, the appellant establishment was liable to pay the contributions under the Employees Insurance Act, 1948, as alleged by the respondent corporation.

10. It is seen from the judgment of the learned single judge that the respondent corporation had relied upon the decision of E.S.I.C Hyderabad Vs. Southern Eastern Roadways (1983 II L.L.J.396) to support and sustain its contentions. In the said decision, a Division Bench of the Andhra Pradesh High Court has held as follows :-

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b)"The Employees" State Insurance Act is aimed at conferring benefits on employees in case of sickness, maternity and employment injury. Section 38 of the Act mandates that all the employees in the factories or establishments shall be insured. The initial and vital endeavour should be to identify the beneficiaries or the employees for insurance. It is well settled that the employees in head office as well as the branches are comprehended within the ambit of the coverage of the Act. The "branch office is only an appendage to the head office and the branches are located in the place or State where the head office is situated or other places outside the States also to measure upto the expansion or diversification of the business or undertaking. Each branch is an off-shoot of the head office and cannot be considered to have an independent entity as all the transactions ultimately funnel into head office and the entirely of transactions of the head office and branches as well are reflected by the Head Office as one unit. The infrastructure for the maintenance and running all the branches flows from the same capital source and the streams of business by all the units will be ultimately pooled. It is not in dispute that the branches carry on the identical business and transactions. Each branch is a component of the main office and all the branches are 'miniatures of the main office and as such cannot be considered as separate and independent entites'.

11. The decision in Mangalore Ganesh Beedi Works (Partnership firm) Mysore Vs. The Regional Director, Employees' State Insurance Corporation, Madras, (1997 II M.L.J.514), was also relied on by the respondent corporation in which it was held that the firm was liable to pay the contribution in respect of those workers also, even though they were less than 20 in number, working in the branch office at Tachanallur in Mysore, since the firm was carrying on business of manufacturing and selling beedies, having registered office at Mysore. The Learned Single Judge relying on the above mentioned decisions had come to the conclusion that the claim made by the respondent corporation against the appellant establishment was sustainable in law.

12. The learned counsel Mr.Sanjay Mohan, appearing on behalf of the appellant in the present appeal while arguing that the decision of the Learned Single Judge cannot be sustained for the reason that once the Employees' State Insurance Tribunal had found, on facts, that the branches in the various states and the registered office at Chennai were functioning independently without any administrative, financial or business connections , it cannot be said that there is such integrality amongst every branch and the registered office at Chennai so as to hold that each is a limb of the other so as to be taken as an integral unit for the purpose of

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assessment of contributions to be made under the provisions of the Employees' State Insurance Act, 1948. The learned counsel had relied on the decision of the Supreme Court in Transport Corporation of India Vs. Employees' State Insurance Corporation and another, reported in (2000) 1 Supreme Court Cases 332, wherein it was held that

> "once the appropriate Government exercises that power under Section 1(5) of the Employees' State Insurance Act, all the Establishments situated within the territories of that State will get covered by such a notification. Their branches within the State, admittedly, will be covered by the sweep of the notification read with the proviso to Section1(5) of the Act. So far as the branches situated outside the State are concerned, if the establishment is covered by the notification being situated within the territories of the State and if on facts it is found that such outside branches have functional integrality with the activities of the main establishment and are directly under the control and supervision of the main establishment, it cannot be said that such notification issued by the State has any extra-territorial operation. It has only territorial operation. Meaning thereby, it covers within its sweep all establishments situated within the State and covered by the notification and also automatically covers all the branches situated outside the State which are factually found to be mere appendages and limbs and part and parcel of the very same establishment".

13. Even if that is the accepted position of law, the learned counsel appearing for the appellant points out that the Employees' State Insurance Tribunal had found, on facts, that the branches and the registered office were functioning independently and they were not having functional integrality based on the financial statements filed by the appellant establishment for the purposes of statements of accounts and balance sheet for payment of tax. The learned counsel appearing for the appellant further contended that the Learned Single Judge ought to have seen that the Tamil Nadu Notification issued under Section 1(5) of the Employees' State Insurance Act, 1948, could have extraterritorial application only if the branches outside the Tamil Nadu State were mere limbs or appendages, otherwise, the question of extending the coverage of the branches of the appellant establishment under the Employees' State Insurance Act would not arise. In such circumstances the judgment and decree of the learned single judge, dated 28.10.1998, made in CMA.No.1039 of 1990 ought to be set aside. Consequently, the order of the respondent corporation, dated 25.06.1986, ought to be held as illegal, ultra vires, void and cannot be sustained in the eye of law.

14. The learned counsel for the appellant establishment had also contended that an appeal against an order passed by the Employees' State Insurance Act, 1948, could only be on a substantial question of law. Therefore, the finding of fact by the tribunal with regard to the independent functioning of the branches of the

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registered office in Chennai could not have been disputed before this court in appeal. Further, there was nothing on record to show or to prove that the branches were having integrality with the registered office of the appellant corporation.

15. On a perusal of the documents before this Court and on an analysis of the decisions cited before us it is clear that the Tamil Nadu notification, dated 22.12.1976, made in G.O.Ms.No.1088, cannot be said to have extraterritorial application with regard to the branches of the appellant establishment, unless it is found, on facts, that they are mere limbs and appendages having functional integrality with the registered office at Chennai. In view of the finding of fact, by the Employees' State Insurance Tribunal, Chennai, that the branches and the registered office at chennai of the appellant establishment were functioning independently and are not controlled by one another, it would only be logical to hold that they cannot be taken as a single entity for the purpose of application of the provisions of the Employees' State Insurance Act, 1948. In such circumstances, the judgment and decree of the learned single judge, dated 28.10.1998, made in CMA.No.1039 of 1990, cannot be sustained. The decisions cited and relied upon by the learned single Judge cannot be applied in the present case in view of the fact that functional integrality amongst the branches and registered office at chennai has not been proved to be in existence. On the other hand, the Employees' State Insurance Tribunal, Chennai, had clearly found that except for the fact that certain statements of accounts and balance sheets were found to be in common, there was nothing to show, from the evidence available, that the power of control by the registered office at chennai on the branches in the various states was intrinsic and of a pervasive nature to prove the aspect of functional integrality. Therefore, this court is of the considered view that the appellant establishment cannot be burdened with the demand for contributions under the provisions of Employees' State Insurance Act, 1948, as determined by the order of the respondent, dated 25.06.1986, based on the Tamil Nadu notification, dated 22.12.1976. Therefore, the judgment and decree of the learned single judge, dated 22.10.1998, made in CMA.No.1039 of 1990 is set aside and the order of the respondent, dated 25.06.1986, and the impugned order of the respondent corporation order No.TN/INS/IV/51-8806, dated 25.06.1986, are also set aside. Therefore, the Letters Patent Appeal stands allowed. Consequently, the connected civil miscellaneous petition is closed. No costs.

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To :

The Regional Director,
Employees' State Insurance
Corporation,
143, Sterling Road,
Madras - 34

1 cc to Mr.B.R. Ramesh Babu, SR. 25477
1 cc to Mr.S. Ramasubramanian & Associates, Sr. 27703

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